

NCUA LETTER TO CREDIT UNIONS

**NATIONAL CREDIT UNION ADMINISTRATION
1775 Duke Street, Alexandria, VA 22314**

DATE: February 2002 **LETTER NO.:** 02-CU-04

TO: All Federally Insured Credit Unions

SUBJ: Compliance with Federal Flood Insurance Requirements

ENCL: Flood Disaster Protection Checklist

Dear Board of Directors:

All federally insured credit unions are required to comply with the provisions of the National Flood Insurance Reform Act of 1994, which amended the National Flood Insurance Act of 1968, and the Flood Disaster Protection Act of 1973. Part 760 of NCUA's Rules and Regulations implements the requirements of these laws.

Typically, flooding causes more than \$1 billion in damage each year in the United States. The Federal Emergency Management Agency (FEMA) also reports that despite the likelihood of flood damage in Special Flood Hazard Areas (SFHAs), less than half of the structures located in SFHAs are insured against such loss. In fact, the risk of loss by flooding in those areas is much higher than the risk of fire. Over the life of a 30-year mortgage, a property located in a SFHA has a 26 percent chance of being flooded compared with a one percent chance of having a loss by fire.

These facts illustrate the importance of enforcing the provisions of the National Flood Insurance Act so credit unions and credit union members are protected against catastrophic losses.

NCUA reviewed a compilation of recent examination findings and learned that some credit unions are not fully complying with the requirements of the NCUA's Flood Insurance Regulation. This letter serves as a reminder of the regulation's key provisions and provides information about where you can obtain additional guidance to assist you in strengthening your compliance program. It also corrects

information provided in NCUA Letter to Credit Unions 01-CU-24, previously distributed via the Internet only at www.ncua.gov. The section of this letter on Purchase Requirements was not correct. Flood insurance should cover the principal balance or the maximum limit of coverage, whichever is “less” not “greater” as stated in the letter.

SUMMARY OF KEY FLOOD INSURANCE REQUIREMENTS

Flood Hazard Determinations (NCUA Regulations, Part 760.3, 760.6)

Subject to a few exceptions, a credit union cannot make, increase, extend, or renew any loan secured by personal property, a building, or mobile home on a permanent foundation, that is located in a special flood hazard area unless the collateral is covered by flood insurance for the term of the loan. Therefore, a flood hazard determination must be performed before the closing of the loan. The credit union or a servicer acting on its behalf must document the determination using the Standard Flood Hazard Determination Form provided by the Federal Emergency Management Agency. This form must be retained for the life of the loan.

Fees and Charges (NCUA Regulation, Part 760.8)

The credit union may charge borrowers a reasonable fee for determining whether the building or mobile home securing a loan is, or will be located, in a SFHA. The portion of the cost for the life-of-loan monitoring must be disclosed as a finance charge in accordance with the Truth in Lending Regulations. (12 CFR 226.4(c)(7)).

Notice to Borrowers (NCUA Regulation, Part 760.9)

If the Standard Flood Hazard Determination shows the building or mobile home securing the loan is in a SFHA, the credit union must mail or deliver a written notice to the borrower within a reasonable time (usually considered to be 10 days). The notice must inform the borrower that the property is in a SFHA, the requirement for purchase of flood insurance, whether flood insurance coverage is available from the National Flood Insurance Program, and whether Federal disaster relief assistance may be available in the event of flooding. A sample notice form is provided as an appendix to Part 760 of NCUA’s Rules and Regulations.

Purchase Requirements (NCUA Regulation, Part 760.3)

If the building, mobile home, or personal property securing the loan is in a SFHA and flood insurance is available, the credit union must require the borrower to purchase insurance in an amount sufficient to cover the principal balance or the

maximum limit of coverage for that property under the National Flood Insurance Reform Act, whichever is less. The insurance must be purchased before the loan is closed.

If the credit union or the borrower has reason to believe that an area has been improperly designated as a SFHA, the borrower may apply to FEMA for a Letter of Map Amendment. Unless the map is revised or a Letter of Map amendment is obtained, insurance must be purchased.

Escrowing Flood Insurance Premiums (NCUA Regulation, Part 760.5)

If the credit union requires an escrow for taxes, insurance premiums, fees or other charges, then it must also escrow for required flood insurance premiums.

Notice to FEMA (NCUA Regulation, Part 760.10)

The credit union must notify FEMA of the identity of the loan servicer at the time the loan is made, increased, extended, renewed, sold, or transferred. The notice must be sent to the insurance carrier that issued the insurance policy so the mortgagee endorsement can be updated. This also helps the credit union ensure the policy is maintained in force.

Forced Placement of Flood Insurance (NCUA Regulation, Part 760.7)

If the credit union determines that the borrower allowed the flood insurance coverage to lapse, the credit union must notify the borrower that the borrower must obtain the insurance. If the borrower does not provide evidence of insurance coverage within 45 days, the credit union is required to purchase the insurance on the borrower's behalf. The credit union may charge the borrower for the cost of the premiums and fees.

The attached checklist has been developed for examiners to assess the credit union's compliance with the flood insurance regulation. It may also be helpful to you in evaluating your compliance program.

If you need additional information, the following resource listing will help you find additional information.

Flood Insurance Information Resources

General Information about the National Flood Insurance Program:

Federal Emergency Management Agency
Federal Insurance Administration

500 C Street, S.W.
Washington, D.C. 20472
Fax: (202) 646-3362

Website: <http://www.fema.gov/nfip/>

Lender compliance information: <http://www.fema.gov/nfip/infol.htm>

Interagency Questions and Answers Regarding Flood Insurance:
<http://www.fdic.gov/news/news/financial/1997/fil9777.html>

Library of publications: <http://www.fema.gov/nfip/library.htm>

To order Flood Hazard Boundary Maps or Flood Insurance Rate Maps,
call or write:

Federal Emergency Management Agency
Map Service Center
6730 Santa Barbara Court
Baltimore, Maryland 20221-5624
Telephone: 1-800-358-9616
Fax: 1-800-358-9620

Or order maps online: <http://www.fema.gov/msc>

If you have any questions concerning compliance with the flood insurance regulations, please discuss them with your examiner, your NCUA Regional Office for your area, or, in the case of state chartered credit unions, your state supervisory authority.

Sincerely,

/s/

Dennis Dollar
Chairman

Type "X" when complete



FDPA - FLOOD DISASTER PROTECTION ACT		
LOANS - REAL ESTATE AND MOBILE HOMES		
INTRODUCTION AND PURPOSE		
APPLICABILITY		
PENALTIES		
RECORD RETENTION REQUIREMENTS		
EXAMINATION QUESTIONNAIRE	Yes/No	COMMENTS
1. Does the credit union make, increase, extend, or renew any loan that is secured by improved real estate or mobile homes as defined in Part 760.2 (i) of NCUA's Rules and Regulations? If yes, complete the remainder of the checklist. If no, stop here.		
2. Does the credit union identify whether property proposed as security for a loan is located in a Special Flood Hazard Area(SFHA) before the loan is granted? (NCUA Reg. Part 760.3)		
3. Does the CU maintain an accurately prepared, Standard Flood Hazard Determination (SFHD) Form to document the determination of whether improved real estate or a mobile home offered as security for a loan is located in a special flood hazard area? (NCUA Reg. Part 760.6)		
4. Does the CU maintain a record of the SFHD Form either in hard copy or electronic form for as long as it owns the loan? (NCUA 760.6 (b))		
5. If the credit union uses a third party to prepare flood zone determinations, do the contractual documents between the parties:		
a. Provide for the third party's guarantee of its work?		
b. Contain provisions to resolve disputes relating to determinations, to allocate responsibility for compliance and to address which party will be responsible for penalties incurred for noncompliance?		
6. Does the credit union charge the borrower a fee for flood determination only when: (NCUA Reg. 760.8)		

a. The borrower initiates a transaction that triggers the determination; such as making, increasing, extending, or renewing the loan? (760.8(b)(1))		
b. the determination is made in response to a remapping by FEMA? or (760.8 (b)(2-3))		
c. the determination results in the purchase of flood insurance under forced placement provision? (NCUA Reg. Part 760.8(b)(4))		
7. Does the credit union obtain life-of-loan monitoring and charge the borrower the fee? (NCUA Reg. 760.8(a))		
8. Is the life-of-loan portion of the fee broken out from the original determination fee and disclosed as a finance charge as required under Regulation Z? (12 CFR 226.4(c)(7))		
9. Are the fees charged by the credit union for making a flood determination reasonable? (NCUA Reg. Part 760.8)		
10. Is flood insurance required for the building, mobile home, or personal property securing a loan, if located in an area identified as being a Special Flood Hazard Area? (NCUA Part 760.3(a))		
11. Does the CU rely on a prior determination only if the loan is being increased, extended, renewed or purchased and the prior determination was made no more than seven years ago and the community has not been remapped? (NFIA Subchptr III 4104b(e))		
12. If the property to secure the loan is or will be in a Special Flood Hazard Area (SFHA), does the CU provide the borrower and the servicer with a Notice to Borrower at least 10 days before closing and retain a copy of the record of receipt (acknowledgement from borrower) for as long as it owns the loan? (NCUA Reg. Part 760.9)		
13. Does the written Notice to the Borrower contain the following information:		
a. A warning that the building or mobile home is or will be located in a special flood hazard area? (NCUA Reg. 760.9 (b)(1))		
b. A description of the flood insurance purchase requirement? (NCUA Reg. 760.9 (b)(2))		
c. A statement that flood insurance coverage is available under the National Flood Insurance Program and may also be available from private insurers (if applicable)? (NCUA Reg. Part 760.9 (b)(3))		

d. A statement whether Federal disaster relief assistance may be available in the event of damage to the building or mobile home caused by flooding in a Federally-declared disaster? (NCUA Reg. Part 760.9(b)(4))		
14. Does the CU receive and retain an acknowledgment from the borrower of the receipt of the Notice before the loan closes? (NCUA Reg. Part 760.9(d))		
15. If an improved property or mobile home is located in an SFHA and flood insurance is required, does the CU require the borrower to obtain a flood insurance policy, with the credit union as loss payee, in the amount required to cover the principal balance by the time the loan closes? (NCUA Reg. Part 760.3(a))		
16. Does the CU monitor flood insurance coverage for the life of the loan and require coverage if it determines coverage is not adequate or has elapsed? (NCUA Reg. Part 760.3(a) and 760.7)		
17. If the credit union determines that the borrower has not maintained adequate flood insurance coverage, does the credit union provide written notice to the borrower that the required insurance coverage must be obtained within 45 days of the notice or the credit union will purchase the insurance at the borrower's expense? (NCUA Reg. Part 760.7)		
18. Does the credit union purchase the coverage on the borrower's behalf if the borrower does not obtain the required coverage within the required time period? (NCUA Reg. Part 760.7)		
19. If the CU requires the escrow of funds for property taxes, hazard insurance, or other fees, does it also require the escrow of funds to cover premiums for flood insurance? (NCUA Reg. Part 760.5)		
20. If an escrow account is established, does the CU comply with the escrow limitations and statements requirements of RESPA? (NCUA Reg. Part 760.5)		
21. Did the CU provide written notification to FEMA (or FEMA designee) of the identity of the servicer of the loan? (NCUA Reg. 760.10(a))		
22. If the CU sells or transfers the servicing of loans subject to flood insurance requirements, does the CU have procedures to provide a notice to the Director of FEMA or his designee within 60 days of the effective date of the transfer? (NCUA Reg. Part 760.10(b))		

Cell: A5

Comment: The Flood Disaster Protection Act (FDPA) requires NCUA to ensure credit unions do not make loans secured by uninsured real estate or mobile homes located in special flood hazard areas, unless adequate insurance coverage is acquired. The exception is loans less than \$5,000 with terms less than one year, or any state owned property covered under a policy of self insurance satisfactory to the Director of FEMA.

Cell: A6

Comment: Flood insurance is required for the term of the loan on buildings or mobile homes when all three of the following factors are present:

The institution makes, increases, extends, or renews any loan(s) (commercial or consumer) secured by improved real estate or a mobile home affixed to a permanent foundation ("security property");

The property securing the loan is located or will be located in an SFHA as identified by Federal Emergency Management Agency (FEMA); and

The community participates in the National Flood Insurance Program (NFIP).

In the case of mobile homes, the criteria for coverage turns on whether the mobile home is affixed to a permanent foundation. A permanent foundation includes mobile home parks where a mobile home is connected to utilities. An institution does not have to obtain a security interest in their underlying real estate in order for the loan to be covered by the final rule.

Flood insurance requirements also apply to loans where a security interest in improved real property is only taken "out of an abundance of caution." Section 102(b)(1) of the FDPA, as amended by the Reform Act, provides a regulated lending institution may not make, increase, extend, or renew any loan secured by improved real property located in a special flood hazard area unless the improved real property is covered by the minimum amount of flood insurance required by statute.

Cell: A7

Comment: No specific civil or criminal penalties or liabilities are provided for in the Act. Administrative actions for violations may be pursued under the general regulatory powers of NCUA. However, if a CU has not met all the requirements of the Act and the borrower sustains a loss due to flooding, the CU may run the risk of being held liable in a negligence suit.

Cell: A8

Comment: Credit unions must maintain sufficient records to indicate the method used to determine whether improved real estate or a mobile home is in a Special Flood Hazard Area. You should find in every loan file subject to FDPA a Standard Flood Determination Form and the acknowledgement from the borrower that they received the required flood insurance notice. Although not required, a credit union may wish to retain copies of any other notices sent to the borrower and a copy of the flood insurance policy.

Cell: A12

Comment: CUs must maintain sufficient records to indicate the method used to determine whether loans require flood insurance. Effective 1/2/96, CUs are required to use and maintain the "Standard Flood Hazard Determination Form" in determining whether property offered as collateral on a loan is located in a SFHA. A copy of the form can be obtained at www.fema.gov/nifp/forms. CUs may rely on a third party (i.e., an appraiser) to determine whether the property is in a SFHA, but the third party must now guarantee the determination.

For loans made before 1/2/96, the records must include (a) copies of official maps, including the date and complete panel number of the FEMA map used to determine whether the collateral is located in or out of a flood hazard zone; (b) written statements in each file indicating a flood determination was performed and the result; and (c) copies of any written contracts between the CU and the appraiser performing flood assessments.

Cell: A26

Comment: When a loan is secured by property located in a SFHA, the CU must mail or deliver a written notice to the borrower at least 10 days before closing. The notice must include (a) statement that the property is located in a special flood hazard area; (b) a description of flood insurance purchase requirements established in section 102(b) of the Flood Disaster Protection Act as amended (42 USC 4012a(b)); (c) statement, where applicable, that flood insurance coverage is available under NFIP and may also be available from private insurers; and (d) whether federal disaster relief assistance will be available for such property in the event of damage caused by flooding in a federally declared disaster area.

Cell: A32

Comment: The CU must obtain a written acknowledgment from the borrower that the property is located in an SFHA and the borrower has received the mandatory notice regarding federal disaster relief assistance.

Cell: A33

Comment: The borrower should present evidence of the purchase of flood insurance at least equal to the amount of the loan, or the maximum amount available if the property is in a community insured under FEMA's National Flood Insurance Program (NFIP).

Cell: A34

Comment: Flood insurance is written annually. The CU is responsible for ensuring coverage is renewed and maintained for the duration of the loan. When designated as mortgagee, the CU should receive copies of the policy and all renewal notices. If the borrower does not renew the policy, the CU has the responsibility to force place it or call the loan.

Cell: A37

Comment: NCUA:

Flood premium escrow accounts are only required when escrow accounts are established for other items such as property taxes or fire hazard insurance. The regulation does not require an institution establish escrow accounts if it is not their policy to do so. This requirement only applies to loan transactions after September 23, 1995.

Cell: A38

Comment: The monthly escrow amount can not exceed 1/12 of the amount anticipated to be paid for charges during the next 12 months plus the amount necessary to maintain a balance not to exceed 1/6 of the amount to be paid in that period. An annual statement must be sent by January 30 each year. (Reg. X 3500.17)

Cell: A39

Comment: The notice to FEMA or the FEMA designee may be made electronically if that is satisfactory to FEMA.